



OFFICE OF THE DEPUTY COMMISSIONER - LEGAL MATTERS

LEGAL BUREAU BULLETIN

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- I. SUBJECT:** **UNLAWFUL EVICTIONS**
- II. QUESTION:** What are the duties and responsibilities of police officers in enforcing Administrative Code Section 26-521 and New York State Real Property Actions and Proceedings Law Section 768 – Unlawful Eviction.
- III. ANSWER:** The police officer's duties and responsibilities are set forth below as well as in Patrol Guide 214-12.
- IV. DISCUSSION:**

Police officers have a very important role in investigating and acting upon complaints of unlawful evictions. In order to exercise this role properly, police officers must be fully familiar with the law. This Bulletin is designed not only to outline the requirements of the law but to also explain some of the problem areas contained within the law.

What is an unlawful eviction? Simply stated, an unlawful eviction occurs when:

- A person has been in lawful occupancy, *and*
- The lawful occupancy is within a dwelling unit that is residential property, *and*
- The person has been evicted or an attempt has been made to evict without a legitimate court or government order.

Knowledge as to what the above three requirements mean is vital to enforcement of this law.

A. LAWFUL OCCUPANCY

A person is protected under the Unlawful Eviction statute if he falls within any of the following terms of occupancy:

1. He has *lawfully occupied a dwelling unit for 30 or more consecutive days.*
 - a. For purposes of this section, a person has "lawfully occupied" his dwelling unit so long as the occupancy was not criminal, such as in a circumstance of trespass.

- b. Even if a person's occupancy was in violation of the terms of a lease - such as an "illegal sublet" - he is protected so long as the occupancy was not criminal.
- 2. He has *lawfully occupied a dwelling unit pursuant to a lease*.
 - a. Even if a person has occupied a dwelling unit for fewer than thirty days, he is protected if he has commenced his occupancy and has a lease for the dwelling unit.
- 3. He has lawfully occupied a dwelling unit subject to the hotel stabilization provisions of the rent stabilization law AND has requested a lease pursuant to the rent stabilization law.
 - a. Even if a person has occupied a dwelling unit for fewer than thirty days and has no lease, he is protected if
 - i. the dwelling unit in question is subject to hotel rent stabilization, and
 - ii. the complainant has commenced his occupancy and his occupancy has not yet terminated, *and*
 - iii. he has requested a lease.
 - b. The "request" for a lease may be as simple as a statement to the hotel clerk that "I want a lease."
 - c. The request for a lease does not have to specify a length of time. However, if the length of time is specified and it is for a period of less than six months, then such request does not qualify as a "request for a lease" for purposes of this hotel rent stabilization provision.

B. RESIDENTIAL DWELLING UNIT

- 1. The unlawful eviction statute covers any residential dwelling unit in a one or two family home, or a multiple dwelling. It covers roommates or family members sharing a home or apartment.
- 2. The unlawful eviction statute does not cover commercial property.
- 3. The following are not considered multiple dwellings and, therefore, are not covered by the statute: hospitals, convents, monasteries, asylums, public institutions.
 - a. Government owned housing is exempt from the statute. e.g., NYCHA housing.
 - b. Privately owned housing, even if receiving government funding, is *not* exempt. Therefore, "welfare hotels" which are privately owned but receive funds for housing residents referred by the Human Resources Administration, are covered by the statute.

C. AN EVICTION OR AN ATTEMPT TO EVICT

It should be noted that any person who evicts or attempts to evict a tenant unlawfully

violates this law. It is not limited to the owners or agents of the owners, such as superintendents. It includes anyone who may directly or indirectly be in control of a dwelling unit. A tenant who subleases his dwelling unit is in the same position as an owner with respect to his sub-tenant.

If a tenant lawfully occupies (as explained in A, above) a residential dwelling unit (as explained in B, above) then the tenant may not be evicted nor may there be an attempt to evict the tenant as more fully described below:

1. Under this statute, an attempt to evict is equivalent to an eviction.
2. An individual may be guilty of an unlawful eviction when he evicts or attempts to evict an occupant by:
 - a. Locking the occupant out of the dwelling unit.
 - b. Using or threatening to use force to remove an occupant.
 - c. Denying essential services such as heat, electricity or water.
 - d. Removing the entrance door.
 - e. Removing the occupant's possessions.
 - f. Allowing serious Building or Health Code violations to exist.

Note: The actions enumerated in paragraph 2, above, only constitute an unlawful eviction if they are committed for the purpose of evicting. For instance, if a landlord does not provide heat only because he does not want to pay the oil bill, that failure to provide heat does not constitute an unlawful eviction.

1. An individual may not be charged with an Unlawful Eviction if the "eviction" was pursuant
 - a. to a Court or Government order, such as:
 - i. Warrant of eviction.
 - ii. Government agency Vacate Order
 1. New York City Departments of Fire, Buildings, Health, and Housing Preservation and Development may, under emergency circumstances, order that the occupants of a building vacate the premises.
 2. Government owned housing is expected. Therefore, the removal of an occupant by a government agency is not an Unlawful Eviction.
 3. Family or Criminal Court Order of Protection. An Order of Protection may be issued which directs that an occupant of a dwelling unit stay away from that dwelling unit. It would not be an Unlawful Eviction for the beneficiary of an Order of Protection to enforce the provisions of the Order.

D. ACTIONS TO BE TAKEN BY INVESTIGATING OFFICER UPON RECEIVING UNLAWFUL EVICTION COMPLAINT

In order to make an arrest for an Unlawful Eviction, as with any other crime, the investigating officer must have probable cause to believe that each and every element of the crime has been satisfied.

In the event an Unlawful Eviction is committed during a family dispute, a conflict may arise between enforcing the provisions of this section and prudent police action. To compel the violator to allow the family member/complainant to return to the dwelling unit may place the parties in danger of a violent confrontation. Therefore, members of the service may exercise discretion in *not* enforcing this section between family members when safety considerations dictate.

An unlawful eviction is a Class A misdemeanor, but it is not a finger printable offense. Ordinarily, if the violator qualifies, he should be given a Universal Summons. While a summons is the normal process, an arrest will be made instead of issuing a summons (and no DAT issued) when the violator refuses to permit the occupant to re-enter or physically prevents the occupant from re-entering. A refusal to turn the heat back on in an apartment, while qualifying as an unlawful eviction if turned off for the purpose of eviction, is not a physical obstruction warranting an arrest. Police Officers are reminded that, should an arrest be necessary, force may not be used to enter a premises to arrest an owner or owner's agent without an arrest warrant unless there are exigent circumstances.

It is Department policy not to physically assist an occupant in gaining entry to the dwelling unit. Accordingly, police officers should not attempt to break into the dwelling unit in order to allow a tenant to re-enter. Of course, in an emergency, such as when medicine vital to life is required, police officers would assist in gaining entry for the purpose of securing such medicine.

The Corporation Counsel's office is the principal prosecutor in unlawful eviction cases. In order to assist the Corporation Counsel in prosecuting these cases, the summons issuing/arresting officer must make memo book entries identifying the complainant and the complainant's address and telephone number. This information should be made available to the Corporation Counsel prosecuting the case upon request.

V. CONCLUSION:

The Police Department has made Unlawful Evictions an enforcement priority. Whether a family finds itself "out on the street" or returning to its home is often dependent upon a prompt police response to Unlawful Eviction complaints. While the police do not physically assist in gaining access to the dwelling unit, often the threat of arrest is sufficient to inspire a landlord to return access to a dwelling unit to the dispossessed occupant.